

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

COSME GARCIA-CRUZ,

Petitioner,

v.

Civil Action No: 1:14-30072

BART MASTERS,

Warden

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court are petitioner's petition for a writ of habeas corpus, (Doc. No. 1), and respondent's motion to dismiss as moot. (Doc. No. 10). By Standing Order, this matter was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 2). Magistrate Judge VanDervort submitted to the court his Proposed Findings and Recommendation on September 25, 2015, in which he recommended that the district court grant respondent's motion to dismiss, dismiss petitioner's petition for a writ of habeas corpus, and remove this matter from the court's docket. (Doc. No. 11).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge

VanDervort's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Petitioner failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court adopts the findings and recommendation contained therein.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly the court **DENIES** a certificate of appealability.

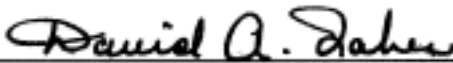
The court hereby **ADOPTS** the factual and legal analysis contained within the PF&R, **GRANTS** respondent's motion to

dismiss, (Doc. No. 10), **DISMISSES** petitioner's petition for a writ of habeas corpus, (Doc. No. 1), and **DIRECTS** the Clerk to remove this case from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and petitioner, pro se.

It is **SO ORDERED** this 27th day of October, 2015.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge